

State of Wisconsin\Government Accountability Board

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Director and General Counsel

November 3, 2011

The Honorable Robin Vos
State Representative
Room 309 East
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Representative Vos:

Your staff contacted our office this morning to ask our opinion as to whether your participation in the consideration and vote regarding Special Session Senate Bill 12, relating to factors determining the reasonableness of attorney fees, would violate the Ethics Code for State Public Officials. It is our understanding that the bill would limit attorney fees in certain cases to amounts lower than allowed under current law. We also understand that you have been involved in a lawsuit as the owner of a rental property, and that SB 12 may have governed the award of attorney fees in that case if it had been in effect when that lawsuit was filed. Based upon media reports, it is unclear whether passage of the bill might still affect or influence the outcome of the lawsuit.

The Government Accountability Board, and the State Ethics Board before it, has analyzed similar matters to determine if the circumstances present a conflict of interest under the Code of Ethics for State Public Officials, specifically under Section 19.45 of the Wisconsin Statutes. I am including with this correspondence a formal opinion of the Board, 2009 GAB 02, which outlines the Board's analysis of such matters. The opinion may also be found at the following link: <http://gab.wi.gov/node/411>

In short, even if Special Session Senate Bill 12 applied to your lawsuit, or to future litigation in which you were involved, it is our opinion that the Ethics Code does not prohibit you from participating in the debates or votes pertaining to the bill. The language at the bottom of page 2 and top of page 3 of the attached opinion is particularly relevant. It states that Sections 19.45(2) and 19.46(1)(a) of the Statutes do not apply when an official action is (a) a legislative decision that affects a large class of people; (b) the official's presence in the class is not significant when compared to the number of similarly situated people in the class; and (c) the effect of the proposed legislation on the official is not significantly different than on other members of the class. The attached opinion also cites other previous opinions which have come to the same conclusion.

As applied to your question, it appears that the proposed bill is certainly a legislative decision and that it would affect not only all landlords in the State, but all other individuals and businesses which may become party to a variety of different legal actions. In addition, your presence in the class is not significant when compared to the number of similarly situated people who might be affected, and the effect on you is not significantly different than on other members of the class.

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In other words, the bill is not one that affects, for instance, only ten property owners, with you or your business owning the largest property that would be affected.

Thank you for contacting the Government Accountability Board. I hope that this information responds to your question, but please feel free to contact us if you have any other questions.

GOVERNMENT ACCOUNTABILITY BOARD



Kevin J. Kennedy
Director and General Counsel